

TERMS AND CONDITIONS OF POSITIVE SYSTEMS SOLUTIONS
SOFTWARE SUPPORT AGREEMENT

1. In consideration of the Customer paying to POSITIVE SYSTEMS SOLUTIONS the Support Fee (plus VAT at the rate prevailing from time to time) in accordance with the Method of Payment POSITIVE SYSTEMS SOLUTIONS agrees to support the Software located at the Customer's Premises for the Maximum number of Concurrent Users for the Duration from the Commencement date, without further charge, by using its best endeavours to;
 - a. Answer all queries about the Software, (Microsoft Dynamics RMS)
 - b. Rectify operator errors in the use of the Software,
 - c. Remedy defects or faults in the Software which arise from inherent defect please note Microsoft are the owner's and developers of this software and while every effort is made to have the software free from errors Positive may have to wait a period of time for Microsoft to supply a fix. Microsoft may also consider some client issues not actual bugs and may not supply a fix. Microsoft's terms and conditions are supplied with the software and once the software is installed the client agrees to these T&C's.
 - d. Support is being offered on Microsoft Dynamics RMS only and NOT hardware, networks, Virus's or any other computer issues. Positive may fix these issues but there will be a charge at our hourly rate.
2. POSITIVE SYSTEMS SOLUTIONS agrees to use its best endeavours to attend to calls for support received within four normal working hours of the request being received by POSITIVE SYSTEMS SOLUTIONS. The support will be carried out by POSITIVE SYSTEMS SOLUTIONS to the Customer, by means of;
 - a. Telephone assistance in the first instance.
 - b. Modem connection if necessary and possible.
 - c. Data Examination. If either of the above does not resolve the difficulty the Customer shall supply to POSITIVE SYSTEMS SOLUTIONS on request a copy of the Data concerned from which POSITIVE SYSTEMS SOLUTIONS may be able to carry out a more detailed examination and make appropriate corrections and repairs.
 - d. Site Visit. If all of the above fail, POSITIVE SYSTEMS will arrange for a site visit by its qualified technical staff to the Customer's Premises this is chargeable, €80 per hour + travel time.
3. Support will in the normal course not be available after or before normal business hours, at weekends, on bank holidays or public holidays or in the days between Christmas Eve and 2nd January in any year. Where Support is required or given during these times the client will be given an out of hours support number, this is explicitly limited to failure of a system.
4. This agreement relates to the support of the Software identified in the Particulars of this Contract only. POSITIVE SYSTEMS SOLUTIONS shall have no obligation to support any other software or to support the Software at a location other than the Customer's Premises or to a greater number of concurrent Machines than the Maximum Number of Concurrent machines supplied by PSS but in the event that POSITIVE SYSTEMS SOLUTIONS does support any such, POSITIVE SYSTEMS SOLUTIONS shall reserve the right to charge an additional fee for such support at its normal rates for the time being.
5. Should the Customer request a modification of the Software, POSITIVE SYSTEMS SOLUTIONS may or may not be able to effect such modification depending on the modification requested, and POSITIVE SYSTEMS SOLUTIONS reserves the right to charge for any modifications made. The liability of POSITIVE SYSTEMS SOLUTIONS under this agreement shall cease upon any modifications or changes being made to the Software by any party other than POSITIVE SYSTEMS SOLUTIONS.
6. Provided also that neither party will be liable to the other for;
 - a. The repair, replacement, recovery or restoration of any hardware, computers, cables, discs, data, networks, or apparatus nor the components of any such.
 - b. Loss or damage caused by any computer virus.
 - c. The loss of or dissemination of any information or data of the other party.
 - d. Any loss or damage howsoever caused by either party or any of its employees or agents in performing or attempting to perform this agreement.
 - e. Any loss of business, loss of revenue, loss of time, delay, inconvenience or any consequential loss or damage whatsoever or howsoever arising (save that this clause shall not extend to absolve the Customer from the obligation to pay to POSITIVE SYSTEMS SOLUTIONS any fees or money payable or due under this or any other contract).
7. In the event that either party is unable to perform any obligation hereunder due to any circumstances beyond its reasonable control, including the action, intervention, or decree of any Government, Act of God, illness, strike, industrial action or power disruption, such party shall give prompt notice thereof to the other party and shall have no liability for any loss, damage, injury or expense (whether direct or consequential) suffered by the other party due to the affected performance of its obligations. Such party shall use reasonable efforts to avoid or overcome the cause affecting performance and shall fulfil all outstanding obligations as soon as it becomes reasonably practical to do so.
8. It is expressly understood and agreed by the Customer that due to the nature of the Software, and the conditions under which the Software is used, POSITIVE SYSTEMS SOLUTIONS may not be able to rectify or repair or retrieve certain lost or damaged data or information or may not be able to rectify damage caused within any particular time scale or at all. In such cases, POSITIVE SYSTEMS SOLUTIONS shall use its best endeavours to remedy and repair and retrieve such data or information or situations as is reasonably possible, and shall in all such cases replace any lost or damaged Software (but not the data contained or held or recorded in such Software), and thereupon the liability of POSITIVE SYSTEMS SOLUTIONS under this agreement shall be ended.
9. It is expressly acknowledged, understood and agreed by the Customer that due to the nature of the Software, and the conditions under which the Software is used, data, software and information stored on a computer or on the Software may be lost, deleted, altered or corrupted or otherwise rendered defective and POSITIVE SYSTEMS SOLUTIONS may not in all cases be able to retrieve or repair or undo the damage or loss or defect. The Customer is advised and acknowledges, understands and agrees that it is the responsibility of the Customer to obtain insurance to cover any possible loss, deletion, alteration or corruption or other defect in the Customer's computer hardware, software, data and information and it is expressly understood and agreed that it shall be the responsibility of the Customer to at all times keep up to date backup copies of all current data.
10. The Customer shall pay to POSITIVE SYSTEMS SOLUTIONS the Support Fee in accordance with the Method of Payment for the first year of this agreement. Unless otherwise stipulated in the Particulars of the Contract, the Customer shall pay to POSITIVE SYSTEMS SOLUTIONS an amount which is represented by the Support Fee as increased by any rise in the Consumer Price Index last published before the anniversary of this agreement, and using the date of this agreement as a base date and in accordance with the Method of Payment for the Second and Third years of this agreement. No service shall be provided by POSITIVE SYSTEMS SOLUTIONS at any time when the Support Fee (as indexed or increased) or any part thereof is due but unpaid.
11. This agreement may be renewed on its expiration for a further calendar year by the Customer paying to POSITIVE SYSTEMS SOLUTIONS such amended fee as may be notified in writing to the Customer by POSITIVE SYSTEMS SOLUTIONS (or in default of such notification by paying the Support Fee as increased by any rise in the Consumer Price Index last published before the anniversary of this agreement, and using the date of this agreement as a base date) and by POSITIVE SYSTEMS SOLUTIONS accepting that payment, without the necessity for a further formal contract document to be signed by either party.
12. The Customer may not assign or transfer or part with the benefit of this agreement to any third party without the prior written consent of POSITIVE.
13. This agreement may not be amended or varied in any way other than by written agreement signed by a director of POSITIVE SYSTEMS SOLUTIONS.
14. This agreement shall be deemed to be entered into at the office of POSITIVE SYSTEMS SOLUTIONS at Unit 6 Canal Walk, Parkwest Ind Est, Dublin 12
15. This agreement will be governed by the Laws of the Republic of Ireland.
16. In this contract the terms "the Customer", "the Software", "the Customer's Premises", "the Maximum number of Concurrent machines", "the Commencement Date", "the Duration" and the "the Method of Payment" mean those set out in the Particulars to this agreement. The term "the Support Fee" means the amount specified as the Support Fee in the Particulars to this agreement and as amended or increased from time to time in accordance with the terms of this agreement.
17. POSITIVE SYSTEMS SOLUTIONS Ltd, a limited liability company, number 449944, registered in Dublin, Ireland and having its registered office at Unit 6 Canal Walk, Parkwest Ind Est, Dublin 12 and which is in this agreement referred to as "POSITIVE SYSTEMS SOLUTIONS".